

48A C.J.S. Judges § 185

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

VI. Authority, Powers, and Duties

H. Particular Judges

1. Successor Judges

b. Authority to Reconsider and Change Predecessor's Decision

§ 185. Decisions regarding motions for new trial and summary judgment

[Topic Summary](#) | [References](#) | [Correlation Table](#)

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Courts disagree as to whether a successor judge has the authority to reconsider the original judge's rulings on a party's motion for a new trial or for summary judgment.

There is authority holding that a successor judge has the authority to reconsider the original judge's grant of a new trial since the original judge would have had the same authority had he or she seen fit to do so.¹ It has also been held, however, that a successor judge is in no position to review and change a predecessor's order granting a new trial where the new trial is granted not specifically and solely based on a particular legal error such that an appellate court can say that the judge's view of the credibility of the witnesses played no part in the decision.²

Similarly, there is authority holding that a successor judge may not reconsider and grant a motion for summary judgment previously denied by a predecessor unless the subsequent motion presents legal issues different from those raised in the earlier motion,³ or the reconsideration is based on new facts developed during discovery conducted between the two rulings.⁴ Other authority holds that a successor judge acts within the bounds of authority in reconsidering either the grant⁵ or the denial⁶ of a motion for summary judgment.

CUMULATIVE SUPPLEMENT

Cases:

Successor judge who was appointed to preside over defendant's new and amended motions for new trial, filed after Supreme Court granted defendant a delayed appeal of his convictions for murder and other offenses, was not required to act as the thirteenth juror and, thus, was not required to assess his ability to act as the thirteenth juror as part of his consideration of whether he was able to perform the duties of the original trial judge, where original trial judge had already performed that function by approving the verdicts rendered by the jury immediately following the original trial. [Tenn. R. Crim. P. 25\(b\), 33\(d\)](#). [State v. Hall](#), 461 S.W.3d 469 (Tenn. 2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 Tex.—[Hull v. South Coast Catamarans, L.P.](#), 365 S.W.3d 35 (Tex. App. Houston 1st Dist. 2011).

 W. Va.—[Coleman v. Sopher](#), 201 W. Va. 588, 499 S.E.2d 592 (1997).
- 2 Fla.—[Kelley v. State](#), 16 So. 3d 196 (Fla. 1st DCA 2009).

 Miss.—[Amiker v. Drugs For Less, Inc.](#), 796 So. 2d 942 (Miss. 2000).

 N.C.—[Gemini Drilling and Foundation, LLC v. National Fire Ins. Co. of Hartford](#), 192 N.C. App. 376, 665 S.E.2d 505 (2008).
- 3 N.C.—[Hastings for Pratt v. Seegars Fence Co.](#), 128 N.C. App. 166, 493 S.E.2d 782 (1997).

 Pa.—[Keffer v. Bob Nolan's Auto Service, Inc.](#), 2012 PA Super 255, 59 A.3d 621 (2012), appeal denied, 69 A.3d 602 (Pa. 2013).
- 4 Mass.—[King v. Globe Newspaper Co.](#), 400 Mass. 705, 512 N.E.2d 241 (1987).

 Mont.—[Teamsters Union Local No. 2, International Brotherhood of Teamsters, Plaintiff, Appellee, and Cross-Appellant v. C.N.H. Acquisitions, Inc.](#), 2009 MT 92, 350 Mont. 18, 204 P.3d 733 (2009).

 N.C.—[Profile Investments No. 25, LLC v. Ammons East Corp.](#), 207 N.C. App. 232, 700 S.E.2d 232 (2010).
- 5 N.M.—[State ex rel. Regents of New Mexico State University v. Siplast, Inc.](#), 1994-NMSC-065, 117 N.M. 738, 877 P.2d 38 (1994).
- 6 D.C.—[DeWitt v. District of Columbia](#), 43 A.3d 291 (D.C. 2012), cert. denied, 133 S. Ct. 449, 184 L. Ed. 2d 275 (2012).

 Iowa—[Madden v. City of Eldridge](#), 661 N.W.2d 134 (Iowa 2003).

 Miss.—[Smith v. Campus Edge of Hattiesburg, LLC](#), 30 So. 3d 1284 (Miss. Ct. App. 2010).

 N.M.—[State ex rel. Regents of New Mexico State University v. Siplast, Inc.](#), 1994-NMSC-065, 117 N.M. 738, 877 P.2d 38 (1994).

 N.Y.—[Scelzo v. Acklinis Realty Holding LLC](#), 101 A.D.3d 468, 957 N.Y.S.2d 14 (1st Dep't 2012).

 Pa.—[Garzella v. Borough of Dunmore](#), 62 A.3d 486 (Pa. Commw. Ct. 2013), appeal denied, 72 A.3d 605 (Pa. 2013).

S.C.—[Smith v. Breedlove](#), 377 S.C. 415, 661 S.E.2d 67 (2008).

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